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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,072	10/14/2003	Frank Olschewski	21295.66 (H5686US)	4347

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EXAMINER	
FINEMAN, LEE A	

ART UNIT	PAPER NUMBER
2872	

MAIL DATE	DELIVERY MODE
09/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	**Application No.**	**Applicant(s)**	
	10/685,072	OLSCHEWSKI, FRANK	
	Examiner	**Art Unit**	
	LEE FINEMAN	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-7,9 and 10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-7,9 and 10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 April 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 September 2008 has been entered. Claims 1, 3-7, 9 and 10 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 3-7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Homma et al., US 4,907,287 (henceforth Homma) in view of Zaluzec, US 6,548,810 B2 and Tsuneta et al., US 6,570,156 B1 (henceforth Tsuneta).

Homma discloses in figs. 19-20 a microscope system (1) for detecting and compensating for changes within an observable image of a microscopic specimen (not shown) comprising: a microscope (1) and a computer system (at least 2, 53 or 63 and 59) receiving detected data from the at least one detector (not shown, to 2), the computer system comprising a means (53) for recording a multidimensional image having at least two dimensions, which has a means (54) for calculating signatures of the recorded multidimensional image (column 18, line 56-column 19, line 18), and a means (58) for calculating statistical signature parameters of the recorded multidimensional image (column 19, lines 18-32); positioning means coupled to the microscope (see column 18, lines 37-55); a software module (in 62) sending control signals to the positioning means, wherein the control signals cause a motion (at least column 19, line 66-column 20, line 5) wherein the motion compensates for changes in the observable image of at least some features of the microscopic specimen (see column 18, lines 37-55), wherein the compensation changes the at least some features in the observable image towards their prior state in time (see column 18, lines 37-55), and wherein the control signals are determined on the basis of an inference method from the statistical signature parameters of at least two sequentially recorded multidimensional images (column 18, line 37-column 20, line 25); wherein the statistical signature parameters comprise at least one statistical parameter (minimum and maximum, see column 19, lines 23-32) of a signature interpreted as a distribution function, wherein the statistical parameter is mean or variance or moments or quartiles or skewness or median or maximum and minimum; and wherein changes in scan parameters can be determined from the statistical signature parameters (column 18, line 37-column 20, line 25); and the scan parameters include at least one of image format, a position of the movable stage, an electronic zoom, an objective selection, galvanometer positions, and spectral scan bands (see at least the abstract -mechanical vibrations). Hoffa discloses the claimed invention except for the details of the microscope, specifically, that the scanning electron microscope defines an illuminating light beam and a detected light beam; at least one objective; a movable stage; a scanning module which guides the illuminating light beam as it scans the specimen generating the detected light beam; a detector module having at least one detector detecting at least a part of the detected light beam; wherein the scanning electron microscope is a confocal scanning electron microscope. Further Hoffa does not explicitly state wherein the motion is of the positioning means. Zaluzec teaches in fig. 4 a scanning electron microscope which is includes an illuminating light beam (from 402) and a detected light beam (to 412); at least one objective (404); a movable stage (408); a scanning module (416) which guides the illuminating light beam as it scans the specimen generating the detected light beam; a detector module having at least one detector (412) detecting at least a part of the detected light beam; and wherein the scanning electron microscope is a confocal scanning electron microscope (see at least the abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the confocal scanning electron microscope of Zaluzec in the system of Hoffa to be able to provide high resolution images of thick non-transparent specimens without negative effect (Zaluzec, column 3, lines 9-12). Further, Tsuneta teaches that beam positioning and stage positioning are art-recognized equivalents for compensation of image shifts in the microscope art (column 26, lines 8-49). It would have been obvious to one of ordinary skill in the art at the time the invention was made use any of the above ways of positioning, including the claimed motion of the positioning means (i.e., stage positioning) in the system of Hoffa to compensate for image drift. Regarding claims 7, 9 and 10, the method of utilizing the structure of the claim is inherent therein.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 3-7, 9 and 10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEE FINEMAN whose telephone number is (571)272-2313. The examiner can normally be reached on Monday - Friday 8:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephone B. Allen can be reached on (571) 272-2434. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lee Fineman/
Examiner, Art Unit 2872
25 September 2008